



OFFICE OF THE ATTORNEY GENERAL · STATE OF TEXAS  
JOHN CORNYN

July 15, 2002

Mr. John W. Ford  
President, Board of Trustees  
Galveston Independent School District  
P.O. Box 660  
Galveston, Texas 77553

OR2002-3851

Dear Mr. Ford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165663.

The Galveston Independent School District (the "school district") received a request for information relating to the principal and assistant principal positions at five schools from 1995 to the date of the request, including applications for the positions and the employment file for each position filled. The district claims that some of the requested information is excepted from disclosure under sections 552.101, 552.102, and 552.117 of the Government Code. We have considered the exceptions you raise and have reviewed the information you submitted.<sup>1</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This exception encompasses information that another statute makes confidential. The school district raises section 552.101 in conjunction with section 21.355 of the Education Code. Section 21.355 provides that "[a] document evaluating the performance of a teacher or administrator is confidential." Educ. Code § 21.355. This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). In that decision, we determined that the word "teacher," for purposes of section 21.355, is a person who is required to and does in fact hold a teaching certificate

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<sup>1</sup>This letter ruling assumes that the submitted representative samples of information are truly representative of the responsive information as a whole. This ruling neither reaches nor authorizes the school district to withhold any responsive information that is substantially different from the submitted information. *See* Gov't Code § 552.301(e)(1)(D); Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and who is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* Open Records Decision No. 643 at 4. We also concluded that the word "administrator" in section 21.355 means a person who is required to and does in fact hold an administrator's certificate under subchapter B of chapter 21 of the Education Code and is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *Id.*

The school district asserts that section 21.355 is applicable to the information submitted as Exhibit 5. Having reviewed these documents, we agree that they consist of administrator and teacher evaluations that are made confidential under section 21.355 of the Education Code. Therefore, the school district must withhold the information in Exhibit 5 under section 552.101 of the Government Code.

Section 6103(a) of title 26 of the United States Code makes federal tax return information confidential. The documents submitted as Exhibit 4 include a W-4 form that is confidential under section 6103(a). Therefore, the school district also must withhold the W-4 form under section 552.101 of the Government Code.

Section 552.101 also encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Certain kinds of personal financial information are protected by common-law privacy under section 552.101. In prior decisions, this office has determined that financial information relating only to an individual ordinarily satisfies the first element of the common-law privacy test, but the public has a legitimate interest in the essential facts about a financial transaction between an individual and a governmental body. *See, e.g.*, Open Records Decision Nos. 600 at 9-12 (1992) (TexFlex benefits), 545 at 3-5 (1990) (deferred compensation plan), 523 at 3-4 (1989) (certain financial information contained in loan files of veterans participating in Veterans Land Board programs), 373 at 3-4 (1983) (certain financial information contained in housing rehabilitation grant application files).

The school district asserts that the documents submitted as Exhibit 4 contain private personal financial information.<sup>2</sup> The school district indicates that the information in question relates to employee benefits that are funded entirely by the employee and do not involve any financial contribution on the part of the school district. Based on this representation,

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<sup>2</sup>We note that the school district has redacted these portions of the submitted documents. This office cannot review redacted information. In the future, the school district should submit information in a manner that enables this office to determine whether it is excepted from public disclosure. *See* Gov't Code § 552.301(e)(1)-(2).

we agree that the school district must withhold this type of employee benefit information under section 552.101 in conjunction with common-law privacy. Additionally, we have marked other employee financial information in Exhibit 2 that is protected by common-law privacy. The school district must also withhold the marked information in Exhibit 2 under section 552.101.

The school district also raises section 552.102 of the Government Code. Section 552.102(b) excepts from disclosure "a transcript from an institution of higher education maintained in the personnel file of a professional public school employee." This exception further provides, however, that "the degree obtained or the curriculum on a transcript in the personnel file of the employee" are not excepted from disclosure. Thus, except for the information that reveals the degree obtained and the courses taken, the school district must withhold the college transcript submitted as Exhibit 3 under section 552.102(b).

Section 552.117(1) excepts from public disclosure the home address, home telephone number, and social security number of a current or former employee of a governmental body, as well as information that reveals whether the person has family members, if the current or former employee requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 at 5-6 (1994), 455 at 2-3 (1987). This information may not be withheld, however, if the current or former employee made the request for confidentiality under section 552.024 after the request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). We agree that the types of information that the school district has marked are excepted from disclosure under section 552.117(1) if the person to whom that information relates timely elected under section 552.024 to keep it confidential. We have marked additional information that may also be excepted from disclosure under section 552.117.

A social security number also may be confidential under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if a governmental body obtained or maintains the social security number pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 at 2-4 (1994). It is not apparent to this office that any social security number contained in the submitted documents is confidential under section 405(c)(2)(C)(viii)(I) of the federal law. You have cited no law, and we are aware of no law, enacted on or after October 1, 1990 that authorizes the school district to obtain or maintain a social security number. Thus, we have no basis for concluding that any social security number contained in the submitted documents was obtained or is maintained pursuant to such a law and is therefore confidential under the federal law. We caution you, however, that chapter 552 of the Government Code imposes criminal penalties for the release of confidential information. *See* Gov't Code §§ 552.007, .352. Therefore, before releasing a social security number, the school district should ensure that it was not obtained and is not maintained pursuant to any provision of law enacted on or after October 1, 1990.

Lastly, we note that Exhibit 1 contains a Texas driver's license number. Section 552.130 of the Government Code excepts from disclosure information that relates to "a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]" The Texas driver's license number that we have marked must be withheld under section 552.130.

In summary, some of the submitted information is confidential under section 21.355 of the Education Code and section 6103(a) of title 26 of the United States Code. The school district must withhold that information under section 552.101 of the Government Code. The information that is protected by common-law privacy also must be withheld under section 552.101. The school district must withhold the college transcript under section 552.102(b), with the exception of the degree obtained and the courses taken. The home address, home telephone number, and social security number of a current or former employee of the school district, as well as information that reveals whether the person has family members, must be withheld under section 552.117(1) if the person timely elected to keep the information confidential under section 552.024. A social security number also may be confidential under section 552.101 in conjunction with federal law. The school district must withhold the Texas driver's license number under section 552.130. The rest of the submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

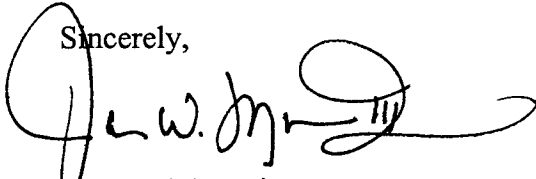
at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J.W. Morris III', with a large, stylized flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 165663

Enc: Marked documents

c: Mr. Anthony P. Griffin  
1115 Moody  
Galveston, Texas 77550  
(w/o enclosures)